

Remarks

Applicant has amended claims 16, 17, 27, 39, 43, 55 and 73 to address the Examiner's objections. Additionally, Applicant has amended claim 49 and cancelled claims 60-68. Applicant respectfully submits that no new matter was added by the amendment, as all of the amended matter was either previously illustrated or described in the drawings, written specification and/or claims of the present application. Entry of the amendment and favorable consideration thereof is earnestly requested

The Examiner has rejected claims 1-5, 7-16, 18-34, 36, 38-42, 44-45, 48-50, 53-54, 57, 59-61, 63-64, 69-71, 73-74 and 76-80 under 35 U.S.C. §102(e) as anticipated by U.S. Patent Application Publication No. 2002/0027164 (Mault-164).

Claims 1, 7, 36 and 69

Claim 1 recites "a processor operable to execute software that maintains a meal plan for the person" and "the meal plan being automatically altered by the processor based on the updated body weight." Claims 7 and 36 recite "determining a target food consumption plan for the person based at least in part on the initial body weight" and "automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person." Claim 69 recites "a first input source being a planned set of food items to be consumed based on a current weight of the person . . . the software elements further operable to receive updated weight of the person to alter the planned set of food items for future food item consumption."

The Examiner has submitted that Mault-164 discloses a "display operable to present the meal plan to the person, the meal plan being automatically altered by the processor based on the updated body weight. (See at least Mault-164; Fig. 3, item 31 and other supporting text; Paragraph 74)." (Official Action 7/9/07, pp. 3-4) Applicant respectfully disagrees with this rejection.

For example, in reviewing Mault-164, the Examiner has pointed to Figure 3 including "Processor 31." However, processor 31 does not provided for automatically updating a meal plan based on an updated weight provided by a user as recited in claims 1, 7, 36 and 69. Additionally, the written specification does not disclose this limitation. Rather, paragraph 74 cited by the Examiner states that the "consumed food items, diet log information, physical activity data, and the person's weight and other useful physiological data may be transmitted from the PDA 40 to computer system 49a" and that the "person, or other authorized people . . . may access the data" and further "[f]eedback may be provided to the person via the PDA 40." (Para. 74) Mault-164 further states that the "[f]eedback provided to the person can [be] controlled by the data collected by the system." (*Id.*) Accordingly, while Mault-164 discloses that information can be uploaded by a user, that personnel may access the uploaded data and that feedback may be sent to the user based on a review of the uploaded data by the personnel, nowhere does Mault-164 disclose or teach a meal plan being automatically altered by the processor based on the updated body weight.

Accordingly, because Mault-164 does not disclose each and every limitation of claims 1, 7, 36 and 69, Mault-164 can not anticipate these claims. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Additionally, because no combination of the cited prior art discloses or teaches each limitation of claims 1, 7, 36 and 69, no combination can render these claims obvious.

It would not be obvious to further modify Mault-164 according to claims 1, 7, 36 and 69. In further considering the teachings of Mault-164, Applicant notes that Mault-164 teaches that the "feedback" may include "information useful to diet logging, e.g. nutritional information of items purchased, information about prescribed drugs, etc. . . . Lifestyle data, e.g. relating to activities, foods consumed, medications, drinks, environmental conditions, etc. may be collected and stored" such that the "data collected may then be used to provide customized feedback to the person. For example, a TV channel may broadcast health-related content and segments may be chosen, based on the per-

son lifestyle.” (Paras. & 74-75) Additionally, the “feedback may include the nutritional information of the food choice as well as information regarding the overall progress of the individual’s diet” and “may include a suggestion as to an alternate product with superior nutrition.” (Paras. 51-52) Accordingly, while customized feedback may be provided to a user based on review by personnel of the input data provided by the user, nowhere does Mault-164 disclose, teach or hint at a meal plan being automatically altered by the processor based on the updated body weight.

Additionally, claims 1, 7, 36 and 69 all recite a meal plan being automatically altered by the processor based on the updated body weight. Mault-164 specifically teaches that the “authorized people . . . may access the data” to provide feedback. (Para. 74) Nowhere does Mault-164 disclose or teach automatic alteration of a meal plan based on inputted data. Accordingly, Applicant respectfully submits that not only does Mault-164 fail to teach a meal plan being automatically altered by the processor based on the updated body weight as recited in claims 1, 7, 36 and 69, but actually teaches away from this limitation.

Claims 49

As amended, claim 49 recites “receiving an initial profile representative of characteristics of a user including a weight of the user . . . forming a dataset based on the initial profile associated with the user, the dataset including a meal plan based in part on the weight of the user . . . receiving data associated with the weight control elements including an updated weight of the user . . . updating the dataset in accordance with the received data such that the meal plan is altered based in part on the updated weight of the user.”

The Examiner has submitted that Mault-164 discloses “updating the dataset in accordance with the received data” and “the updated dataset being utilized by the user

to follow a personalized weight control program. (See at least Mault-164; Paragraph 51)." (Official Action 7/9/07, pp. 11-12)

As stated previously, Mault-164 does not disclose updating a meal plan based on received data associated with the weight control elements. While Mault-164 does disclose uploading information including a weight of a user and sending feedback from authorized personnel to the user relating to their diet plan, nowhere does Mault-164 disclose or teach that a meal plan is updated based on information provided by the user. Accordingly, because Mault-164 does not disclose updating the dataset in accordance with the received data such that the meal plan is altered based in part on the updated weight of the user, it can not anticipate claim 49. Additionally, because none of the cited art discloses or teaches updating the dataset in accordance with the received data such that the meal plan is altered based in part on the updated weight of the user, no combination of the cited art can render claim 49 obvious.

Claim 73

Claim 73 recites "a display operable to present the meal plan to the person, the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format."

The Examiner has submitted that Mault-164 discloses "the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format. (See at least Mault-164; Figs. 1 and 2, as well as accompanying text; Paragraph 39)." (Official Action 7/9/07, p. 15)

Applicant notes that Figures 1 and 2 of Mault-164 merely illustrate the use of a PDA with a barcode reader and imaging device. (See, FIGS. 1 & 2) In referring to paragraph 39 Mault-164 discloses that a "portable computing apparatus of the present

invention may be embodied in any one of a number of different types of personal digital assistant devices (PDAs)." (Para. 39) While it is known that PDAs provided a calendar for scheduling personal appointments, Applicant has been unable to locate where the device pointed to by the Examiner discloses, a meal plan being displayed in a multi-day format or user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format.

Accordingly, because Mault-164 does not disclose each and every limitation of claim 73, Mault-164 can not anticipate this claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Additionally, because no combination of the cited prior art discloses or teaches each limitation of claim 73, no combination can render this claim obvious.

It is respectfully submitted that claims 1-80, all of the claims remaining in the application, are in order for allowance and early notice to that effect is respectfully requested

Respectfully submitted,

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